FILED
AUG 8 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956

No. [redacted]260

JOHN LUCAS HUDSON, SR., and PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation,

Petitioners,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt,

Respondent.

RESPONDENT'S BRIEF IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1956

No. 1160

JOHN LUCAS HUDSON, SR., and PACIFIC PALMDALE DEVELOPMENT COMPANY, a corporation,

Petitioners,

vs.

WILLIAM A. WYLIE, as Trustee in Bankruptcy of the Estate of John Lucas Hudson, Sr., a bankrupt,

Respondent.

RESPONDENT'S BRIEF IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

The respondent, William A. Wylie, as Trustee in Bankruptcy of the estate of John Lucas Hudson, Sr., upon noting that the Petition for Writ of Certiorari of the Petitioner grossly slants the facts and at places is disrespectful of the Referee in Bankruptcy and of the United States Court of Appeals for the Ninth Circuit, hereby submits this Brief to expedite a speedy termination of this litigation and to defend the Referee in Bankruptcy and the United States Court of Appeals for the Ninth Circuit on the record.

We invite the Court's attention to page 7 of the Petitioners' Petition for Writ of Certiorari in the heading entitled "ARGUMENT FOR ALLOWANCE OF THE WRIT."

wherein the Petitioners, without any support whatsoever from the record, make the following comments regarding the Referee, said comments being wholly irrelevant:

> "The Referee had qualified as such on the Friday preceding the Wednesday when the hearing started. His calendar was made up by a transfer of matters from the calendar of another Referee. With an eagerness to aid creditors which was so avid as to wholly overlook the rights of the bankrupt the Referee determined a fraud which never existed nor was inferable from the evidence."

It is submitted that the Referee, the Honorable Joseph J. Rifkind, prior to his appointment to the bench, was an outstanding specialist in Bankruptcy Practice, having specialized in the same for a period in excess of thirty years. It is further submitted that the record is completely devoid of any evidence to support the above disrespectful comments.

In the last paragraph starting on page 7 of the Petitioners' Petition, the Petitioners accuse the United States Court of Appeals of misquoting plain provisions of State and Federal Case and Statutory Law, ignoring and not determining material issues, straining at illogical inferences from the evidence, and of formulating definitions for terms contrary to judicial and dictionary recitals. The Brief then fails to substantiate these grossly disrespectful charges; fails to demonstrate wherein the Court of Appeals misquoted State and Federal Case and Statutory Law, and fails to demonstrate wherein the Court "formulated definitions for terms contrary to judicial and dictionary recitals." We feel that such accusations are out of place in briefs to this Court and that such accusations are so venomous as to practically constitute contempt of the United States Court of Appeals.

Questions Presented for Review.

The Petitioners spent approximately a page and a half presenting three alleged questions which the Petitioners allege to be questions presented on review.

We are unable to ascertain with any degree of accuracy the precise nature of the questions which the Petitioners present to the Court, and for that reason set forth the following questions presented on review, which, in our opinion, are the only questions presented to the Court:

(a) Whether or not the Pacific Palmdale Development Company was the *alter ego* of the bankrupt;

(b) Whether or not the assets earned under the joint venture contract between the Pacific Palmdale Development Company and Lloyd R. Reeve, Inc., are assets of this bankrupt estate.

Statement of the Case.

The Petitioners' Statement of the Facts found on pages 5 and 6 of the Petitioners' Petition conflicts with Findings of Fact of the Referee and with the statement of the case given by the United States Court of Appeals in its Opinion, and radically differs from the Respondent's version of the facts. For that reason the Respondent makes the following Statement of Facts:

Late in 1952 or early in 1953 John Lucas Hudson, Sr., hereinafter referred to as the bankrupt, made an Assignment for Benefit of Creditors and was unsuccessful in obtaining a release from his creditors. [Tr. p. 205.] The Assignment was still in force and effect at all times herein mentioned. [Tr. pp. 205, 206, 207.]

In the summer of 1953 Mr. Merrill E. Granger, the bankrupt's attorney, prepared a Sole Trader Agreement

giving the wife her earnings as sole and separate property, the sole purpose being to enable the bankrupt to get started in business again without creditors being able to to attack his earnings [Tr. pp. 232, 233, and Ex. "C" in proceedings before the Referee]; Merrill L. Granger at all times had knowledge of the Assignment for Benefit of Creditors [Tr. pp. 361, 319]; Merrill L. Granger had no knowledge or skill regarding the construction or erection of grain bins [Tr. p. 326]; the bankrupt had personal knowledge and skill regarding the submission of bids for grain bins and the construction thereof. [Tr. pp. 72 to 74.]

On numerous occasions between the summer of 1954 and the date of bankruptcy, the bankrupt was advised by Mr. Granger that if he accumulated substantial earnings without a release from his creditors the accumulation would be subject to creditors' demands [Tr. p. 267]; that he should not commit his services [Tr. p. 197] and that he should not be an officer of a corporation [Tr. p. 208]; bankruptcy was contemplated and advice given to the bankrupt by Mr. Granger long prior to the transactions which were the subject of the action which gave rise to this appeal [see Tr. pp. 299, 293, 277 and 267]; and at the time of the formation of the Pacific Palmdale Development Company hereinafter discussed, the bankrupt and Mr. Granger were discussing the filing of a Petition in Bankruptcy, and had in fact sought independent advice of bankruptcy specialists. [Tr. pp. 256, 318, 419, 320 and 323.]

In March of 1954 Articles of Incorporation of Pacific Palmdale Development Company were signed by the alleged incorporators, one Philip Bloom, the wife of the bankrupt and the bankrupt's son. Mr. Bloom withdrew from the Pacific Palmdale Development Company and had

no interest in and to the grain bin transaction prior to the execution of any contract concerning the same. [Tr. of Record, pp. 357, 283, 284, 289, 290 and 306.]

The wife of the bankrupt was a housewife with five children, who had never been in business for herself and had no training in any commercial pursuits. [Tr. p. 203.] She owned nothing other than property which was a result of the earnings of the bankrupt and contributed nothing to the corporation other than nominal incorporation costs. [Tr. p. 204.] The son of the bankrupt, William Hudson, at the time of incorporation, and at all times prior to the execution of any contract, resided in Portland, Oregon, with his family; was 27 years of age; contributed nothing to the corporation, and in fact functioned as a superintendent and was paid a salary for such services as a superintendent. [Tr. pp. 220, 221.] The Pacific Palmdale Development Company did not issue any stock [Tr. of Record, p. 221]; had no capital [Tr. of Record, pp. 324 and 330]; did not keep any ledgers or accounts, and had no capital structure or financial transactions beyond its mere incorporation. [Tr. of Record, p. 324.]

Bankruptcy was filed by the bankrupt on April 19, 1954 and approximately seventeen days prior to bankruptcy the bankrupt contacted Lloyd R. Reeve, informing him that he wanted to find someone to come in with him in a grain bin deal. No mention was made of a corporation. It was proposed that Mr. Reeve finance the submission of bids to the Commodity Credit Corporation and the manufacturing and erection of such bins. [Tr. of Record, pp. 72 to 74.]

On April 3 or April 4, 1954, approximately fifteen days before bankruptcy, a firm understanding was reached be-

tween the bankrupt, individually, and Lloyd R. Reeve, that Reeve would finance the project and that after expenses were determined each would be entitled to one half of the profits. It was only on April 5 or April 6, 1954 that any discussion was had regarding the Pacific Palmdale Development Company [Tr. of Record, pp. 71 to 76], and at that time the bankrupt represented he was the Pacific Palmdale Development Company. [Tr. of Record, p. 77.]

During the various negotiations between Reeve and Hudson, the bankrupt represented to Reeve and to his attorney, Mr. Carl Minton, Sr., that he was the sole owner of the Pacific Palmdale Development Company [Tr. of Record, pp. 81 and 153]; represented that he had organized the Pacific Palmdale Development Company to benefit himself [Tr. p. 82], and the bankrupt's attorney represented that Mr. Hudson had a corporation. [Tr. of Record, p. 161.]

On April 3, 1954 the Articles of Incorporation of the Pacific Palmdale Development Company were mailed to the Secretary of State of the State of California, and on April 6, 1954 the Pacific Palmdale Development Company was incorporated. [See Answer of bankrupt and of the Pacific Palmdale Development Company among exhibits.]

On April 7, 1954, Mr. Reeve and the bankrupt met in Washington, D. C., for the purpose of submitting bids. [Tr. pp. 78 to 79.] At this time the bankrupt presented a joint venture contract, in writing, to Reeve, whereby Lloyd R. Reeve, Inc., a corporation owned by Reeve, en-

tered into a joint venture with the Pacific Palmdale Development Company with Reeve providing the financing for grain bin contracts with the Commodity Credit Corporation, and Pacific Palmdale Development Company was to furnish personal services of the bankrupt to Lloyd R. Reeve, Inc. [Tr. of Record, pp. 78 to 79, and Exhibits designated in the designation of record on Appeal before the Circuit Court.] On April 7, 1954 the bankrupt ostensibly on behalf of the Pacific Palmdale Development Company, executed the agreement referred to, as treasurer of the Pacific Palmdale Development Company. (Note: This was a mere thirteen days prior to bankruptcy.) On April 8, 1954, Pacific Palmdale Development Company allegedly passed a resolution authorizing the bankrupt to act as treasurer for the sole and limited purpose of executing the contract between Lloyd R. Reeve, Inc. and Pacific Palmdale Development Company. [See Exhibits designated in the designations of record on Appeal before the United States Circuit Court.] In Los Angeles and in Washington, D. C., the bankrupt prepared estimates, plans and specifications and assisted in the preparation of all phases of a bid to be submitted to the Commodity Credit Corporation, and was the only person among those involved who had any special knowledge or skill regarding the preparation of such bids for the erection of grain bins [Tr. of Record, pp. 272, 274 and 92]; and on April 9, 1954, ten days prior to the bankruptcy, the bid was submitted to the Commodity Credit Corporation. [Tr. of Record, p. 92.]

On April 17, 1954, two days prior to bankruptcy, a conditional acceptance of the bid was forwarded to Lloyd R. Reeve, Inc., by the Commodity Credit Corporation. [Tr. of Record, p. 93.] On April 19, 1954, conveniently the day of bankruptcy, Lloyd R. Reeve, Inc. accepted the bid of the Commodity Credit Corporation. [Tr. pp. 93 and 94.]

On April 20, 1954, one day subsequent to bankruptcy and one day subsequent to the acceptance of the bid by Lloyd R. Reeve, Inc., the Board of Directors of the Pacific Palmdale Development Company conveniently passed a Resolution which, among other things, contained a resolution that the first $50,000.00 payable to the Pacific Palmdale Development Company, under the joint venture contract of Lloyd R. Reeve, Inc., be payable to the bankrupt. Schedules of the bankrupt in no way disclosed any interest of the bankrupt in and to Pacific Palmdale Development Company nor in the joint venture contract with Lloyd R. Reeve, Inc., and the bankrupt listed creditors in an amount of $327,471.16. [Tr. p. 207.] More than a year subsequent to bankruptcy the above transactions came to the attention of the Trustee from a third party, and it was then and only then that the proceedings giving rise to this Appeal were instituted.

ARGUMENT.

The Petition for Writ of Certiorari Does Not Comply With the Supreme Court Rules 23 and 19.

The Petition for Writ of Certiorari does not comply with Rule 23(1)a, 28 U. S. C. A., p. 15, reading as follows:

1. The Petition for Writ of Certiorari shall contain in the order here indicated—

(a) A reference to the official and unofficial reports stated in the Courts below, if any, and if reported. Any such Orders shall be appended as provided in paragraph (i) hereof.

No copy of the Order of the District Court or of the Findings of Fact, Conclusions of Law and Order of the Referee dated December 6, 1955 are appended to the petition for Writ of Certiorari.

The questions presented on review are lengthy and ambiguous, containing unnecessary detail. (See pp. 2, 3 and 4 of Petitioners' Petition for Writ of Certiorari, and the questions therein propounded.) The respondent does not believe that these questions comply with 1-(c) of Rule 23 of the Supreme Court, *supra*.

The Petition should be denied under Section 1(j)4 of Rule 23 of the Supreme Court, *supra*, reading as follows:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring

consideration will be a sufficient reason for denying his petition."

The Petition does not show acceptable grounds for invoking jurisdiction on Writ of Certiorari under Rule 19 of the Supreme Court. Rule 19, Supreme Court Rules, 18 U. S. C. A., page 12, Appendix I, does not contain any grounds of consideration governing review on Certiorari wherein the Court will grant a Petition for Writ of Certiorari under grounds set forth in (a) on page 12 of the Petition for Writ of Certiorari, "misstatement and misapplication of the Federal Rules in a bankruptcy matter," but on the contrary contains grounds where decisions conflict with any Court of Appeals on the same matter or where the Court of Appeals has decided an important question of Federal law which has not but should be settled by this Court. Item (b) of the Petitioners' Grounds for Invoking Jurisdiction found on page 2 of the Petitioners' Petition contains no allegations to the effect that this is an important State or Territorial question, and also fails to set forth any grounds for invoking jurisdiction under Rule 19 of Rules of the Supreme Court, *supra*.

A. The Statutes Cited by the Petitioners Have No Applicability Whatever to This Case.

Article 300, Chapter 2, Division 1, Part 1, Volume 1 of Deering's Labor Code of California, cited on page 4 of the Petitioners' Petition and relating to assignment of wages, has no applicability whatever to the facts of this case. The evidence presented at the trial before the Referee was direct and conflicting regarding the purpose of incorporation of the Pacific Palmdale Development Company, the bankrupt and his attorney testifying that

Pacific Palmdale Development Company was organized to benefit the bankrupt's attorney, and other witnesses testified that this was his corporation; that he had been advised that he could not be an officer of a corporation; that he could not accumulate earnings and that the whole transaction was engineered by the bankrupt. [See Statement of the Case, references to Transcript, *supra*.]

The following facts testified to by the various witnesses conclusively demonstrated that the Pacific Palmdale Development Company had no purpose save and except as an instrumentality to remove assets of the bankrupt from the reach of creditors: the bankrupt's Assignment for Benefit of Creditors; the knowledge of the bankrupt's attorney that the same was without release [Tr. pp. 232-233, 316-319] The execution of the Sole Trader Agreement, the sole purpose being to enable the bankrupt to get started in business again without creditors being able to attack his earnings. [Tr. pp. 232-233 and Ex. "A" proceedings before the Referee.] The lack of any special knowledge or skill concerning the construction or erection of grain bins, of the bankrupt's attorney, the bankrupt's wife, the bankrupt's son and any other parties connected with the transaction [Tr. pp. 320, 20-21, 203-204]; the fact that the bankrupt had personal knowledge and skill regarding the submission of bids and the erection and construction of grain bins [Tr. pp. 272, 274]; the fact that the bankrupt was advised on many occasions that he could not accumulate substantial earnings without a release from his creditors; the fact that the advice of a specialist in bankruptcy had been solicited prior to the execution of the joint venture contract between the Pacific Palmdale Development Company and Lloyd R. Reeve, and

prior to the incorporation of the Pacific Palmdale Development Company [Tr. pp. 267, 197, 232, 233, 316, 319, 299, 293, 277, 256, 323 and 320]; the fact that negotiations commenced between the bankrupt and Lloyd R. Reeve as individuals on April 2 or April 3, 1954. [Tr. pp. 72-74.] The bankrupt conducted all negotiations with Lloyd R. Reeve and arrived at a firm understanding prior to any written agreement or mention of Pacific Palmdale Development Company [Tr. pp. 72-76]; the fact that the bankrupt on numerous occasions represented that he owned the Pacific Palmdale Development Company [Tr. of Record, pp. 77, 81, 153, 256 and 161]; the fact that the Pacific Palmdale Development Company was not incorporated until thirteen days prior to bankruptcy. (See Statement of Case, *supra*); the Pacific Palmdale Development Company did not issue any stock, had no capital, did not keep any ledgers or accounts, and had no financial structure or financial transactions beyond its mere incorporation [Tr. pp. 221, 324-330]; the only shareholders were to be the bankrupt's son, the bankrupt's wife and the bankrupt's attorney [Tr. pp. 326-327]; the fact that the joint venture contract contained clauses that the Pacific Palmdale Development Company would furnish personal services of the bankrupt and that the Pacific Palmdale Development Company could assign its interests to the bankrupt [see Exhibits designated]; the fact that on April 8, 1954, eleven days prior to bankruptcy, the directors of Pacific Palmdale Development Company passed a Resolution whereby the bankrupt was authorized to execute the joint venture agreement; the fact that one day subsequent to bankruptcy the Board of Directors of the Pacific Palmdale Development Company passed a Resolution whereby the

first $50,000.00 of profits were assigned to the bankrupt [see Answer of bankrupt among Exhibits designated]; the fact that approximately thirty-one days after bankruptcy the bankrupt was paid $15,000.00 [Tr. p. 96], and was paid an additional $6,000.00 constituting all funds paid over to Pacific Palmdale Development Company by Lloyd R. Reeve, Inc.

From the above evidence it should at once be apparent that the bankrupt organized the Pacific Palmdale Development Company for his sole benefit to conceal assets from his creditors and could have contracted directly with Lloyd R. Reeve, Inc. without the medium of a corporation. It should also be apparent that the only services rendered were rendered by Hudson and no services whatever were rendered by the Pacific Palmdale Development Company. The basic contract with Lloyd R. Reeve was clearly a joint venture contract and not an agreement wherein Lloyd R. Reeve employed Pacific Palmdale Development Company or Hudson as an employee to receive wages. It was clearly a profit-sharing transaction. Hudson was clearly the *alter ego* of the Pacific Development Company and as such had a profit-sharing risk contract amounting to a joint venture with Lloyd R. Reeve, Inc.

We know of no authority and the Petitioners have not cited any authority which would in any way hold that an interest in a joint venture is synonymous with, or tantamount to, wages. We know of no California cases whatever which hold that an interest in a joint venture is in any way subject to the provisions of Article 300, Chapter 2, Division 1, Part 1 Volume 1 of Deering's Labor Code of California relating to assignments of wages or salary, and therefore submit that the said Statute is in no way related to the issues of this case.

Gray v. Perlis and Section 158 of the Civil Code of California Do Not Apply to the Facts of This Case.

The case of *Gray v. Perlis*, 76 Cal. App. 511, 245 Pac. 221 (1926), was a case where Perlis, after making an assignment for benefit of creditors, became sick and unable to earn a livelihood for himself or his family, and the burden of supporting the family fell on Mrs. Perlis. The wife in 1916 applied to the Superior Court and obtained a decree of Sole Tradership. The wife opened a ladies tailoring business on premises leased by herself, conducted all negotiations for the opening of the business, and provided the initial cash capital by pawning her own separate property. Some four years later the husband filed a voluntary Petition in Bankruptcy and was adjudicated a bankrupt. On the facts, the trial Court found that the Sole Tradership was not a fraudulent device or a blind; that no conspiracy existed, and that all the capital and assets were the separate property of the wife. The Appellate Court affirmed on conflicting evidence.

In the instant case, the wife of the bankrupt was not trained in commercial pursuits; contributed no capital whatever; the sole asset of the Pacific Palmdale Development Company was the personal services of the bankrupt and the Pacific Palmdale Development Company was incorporated a mere thirteen days prior to bankruptcy; the wife of the bankrupt performed no functions whatever in connection with the joint venture contract and the facts are in no way comparable to *Gray v. Perlis*.

In the instant case, the corporation was obviously organized to conceal assets from creditors at a time when bankruptcy was contemplated, and the bankrupt personally performed all services performed.

It is further interesting to note that in the instant case all of the funds which accumulated were paid over to the bankrupt. [See various references to Transcript, *supra*.]

The ultimate holding of the Court in *Gray v. Perlis* was that the evidence was sufficient to support contested Findings that the assets were separate property of the wife. (See *Gray v. Perlis*, 76 Cal. App. 511 at 517.) References of the Petitioners to *Gray v. Perlis* on page 8 of their Petition are out of context as to the holding found at page 515 was that

> "creditors have no lien on a debtor's labor, nor any way to compel him to work, and consequently he may legally give his entire time, skill and industry to his wife *in aiding* to *carry on a business owned by her* . . . (Italics supplied.)

This does not stand for the proposition for which the Petitioners cite it.

In the instant case the Pacific Palmdale Development Company was the *alter ego* of the bankrupt and actually owned by the bankrupt and not by the bankrupt's wife. Services were not contributed to the bankrupt's wife as was the case in *Gray v. Perlis*. It is therefore again submitted that *Gray v. Perlis* has no application to the instant case.

Section 158 of the Civil Code of California does not apply to the facts in the instant case as this case does not involve a situation where the wife is engaged in business and the husband contributed his services to the business owned by the wife. It does involve a fraudulent and sham corporation wholly owned and dominated by the bankrupt, a corporation without assets, which did not carry on any business whatever. Any holding to the effect that a

joint venture contract between Lloyd R. Reeve, Inc. and Pacific Palmdale Development Company was in fact a contract between the bankrupt and Lloyd R. Reeve, Inc. would in no way conflict with the terms and provisions of Section 158 of the Civil Code of California.

The Findings of Fact of the Referee Should Not Be Reversed Unless Clearly Erroneous.

A reading of the entire Petition of the Petitioners and more particularly the Petitioner's Statement of the Facts and Argument contained on pages 7, 8, 9, 10 and 11, discloses that the Petitioners do not refer to the Transcript of the Record to substantiate their Statements of the Facts and that the facts so stated by them are, in numerous instances, directly contrary to the Findings of Fact and Conclusions of Law of the Referee.

It is apparent that a substantial portion of the Argument for the allowance of the Petition is an argument on the facts, and it is submitted that there was conflicting evidence on all of the facts and elaborate and detailed Findings of Fact and Conclusion of Law regarding all of the facts were made, and the Petitioners have in no way demonstrated how these Findings were clearly erroneous.

It is Hornbook law that the Findings of the trial judge and of the Referee in Bankruptcy will not be reversed unless clearly erroneous. (See *Gold v. Gerson*, 225 F. 2d 859 (C. C. A. Ninth, 1955).)

The Petitioners' Entire Argument Is Based on the Erroneous Assumption That Hudson Had an Agreement to Perform Personal Services.

We have heretofore clearly demonstrated that the entire transaction was conceived for the purpose of hindering, delaying, defeating and defrauding creditors of Hudson. An examination of the joint venture contract between Lloyd R. Reeve, Inc. and the Pacific Palmdale Development Company [Trustee's Ex. 1 at trial, designated among Exhibits designated] reveals that this is purely and simply an agreement to divide the net profits of any grain bin contracts awarded to and performed by the parties during the year 1954. It is not an employment contract nor does it purport to employ Hudson. We submit that this was a joint venture contract between Lloyd R. Reeve, Inc. to share the profits of the grain bin transactions and the parties actually did share the profits shortly after bankruptcy, and that all arguments relating to the performance of employment are therefore inappropriate and out of point.

The argument advanced by the Petitioners, commencing at the last paragraph on page 10 of the Petitioners' Petition, is also unsound as a reading of the joint venture contract will at once reveal that regardless of any conditions precedent or subsequent, the bankrupt had a vested right on the execution of the joint venture contract, to share in any profits realized. If no profits had been realized nothing would have accrued to the bankrupt.

The cases cited in this argument furthermore did not stand for the proposition for which the Petitioners' cite them. Page 45, Section 38(a) and page 66, Section 60 of the Restatement of the Law of Contracts, and Volume 3,

page 1917, Section 667-A of the Revised Edition of Williston on Contracts refer to counter-offers and in no way relate to performance bonds. The case of *Flynn v. Dougherty*, 3 Cal. (unreported) 412, 26 Pac. 831, relates to the filing of a bond in connection with a building to be erected for the State of California as a condition precedent to the right of a materialman to file an action for damages, and is a ruling on a motion for dismissal or a nonsuit It does not relate to the question of whether or not a contract exists relating to a joint venture or to any condition precedent to the right of one party to a joint venture contract to share in the profits. This case therefore clearly does not stand for the proposition for which the Petitioners cited it.

Furthermore, the evidence shows that the Commodity Credit Corporation accepted the bids from Lloyd R. Reeve, Inc. on April 17, 1954, and that on April 19, 1954, Lloyd R. Reeve Inc. in turn accepted the acceptance of the Commodity Credit Corporation. Not one scintilla of proof by way of defense was offered by the bankrupt or by the Pacific Palmdale Development Company as to the precise terms of the contract between the Commodity Credit corporation and Lloyd R. Reeve, Inc. (*supra*); admitted in their Answer the existence of the contract and the fact that profits were received under the contract. [See Exhibits on file designated in Designation of Record on Appeal before the Circuit Court.] No proof was offered regarding the bond requirements of the Commodity Credit Corporation

It is therefore submitted that the Petitioners' contentions are completely devoid of any support from the record.

The Court of Appeals Ruled on All Issues Presented to the Court by the Petitioners.

A reading of the Opinion of the United States Court of Appeals (which Opinion may be found reported at 242 F. 2d, page 455, will reveal that the Court devoted some thirty-six pages to the proposition that fraud was very apparent and that assets were concealed from creditors, yet, on page 19 of the Petitioners' Petition the Petitioners make this startling statement

> "5. The subject Opinion did not respond to an issue presented to the Court by Petitioners which, in good thinking, could only be resolved by reversing the ultimate conclusions of that Opinion. In this argument we have said that there could be no actionable fraud if there is no damage."

The Petitioners then go on to argue that there was no fraud as creditors could have attached moneys owing from Reeve to the bankrupt, and that the Pacific Palmdale Development Company did not hold money adverse to the bankrupt.

How the Petitioners could explain that the bankrupt failed to make any mention of any moneys owing from Reeve to the bankrupt or any moneys owing from the Pacific Palmdale Development Company to the bankrupt, or of any joint venture contract in his schedules, and how the same did not, *ipso facto*, defraud creditors and the Court, we fail to see and thoroughly concur with the Court of Appeals when at page 452 of their Opinion they state: "In the consideration we can only recite the old saw 'there are none so blind as those who won't see.'"

If we were to accept the above argument of the Petitioners it could be argued that in any *alter ego* case

there could be no such thing as an *alter ego* corporation, as creditors could not be defrauded as they would have a right to sue or attach obligors of the *alter ego* corporation by merely suing and alleging that the *alter ego* corporation was the *alter ego* of their debtor. If we were to accept their argument there would be no reason for the *alter ego* doctrine in the law.

Point 6 of the Petitioners' Petition Is Completely Illogical.

Point 6 of the Petitioners' Petition found on page 20 argues that the reasoning of a Court of Appeals is illogical and out of line with the evidence. On the contrary, we submit the entire argument contained under this heading is in itself illogical. The argument fails to take into account that the bankrupt conducted all negotiations leading to the execution of the joint venture contract [*supra*]; that the bankrupt and the bankrupt's attorney represented on numerous occasions that the bankrupt owned the Pacific Palmdale Development Company and was the Pacific Palmdale Development Company [*supra*]; that the bankrupt could have executed the contract directly with Lloyd R. Reeve, Inc. [*supra*]; that the contract was a joint venture contract and an agreement to participate in the profits of a joint venture transaction, as distinguished from a contract to render personal services.

The Court of Appeals' Ruling Re Procedural Estoppel Was Correct.

No. 7 of the Argument of the Petitioners, found on page 21, again argues by quoting only those portions of the record favorable to the Petitioners and by ignoring substantial portions of the record, which amounts substantially to an argument of facts.

The Court of Appeals at page 448 of their Opinion clearly states that on numerous occasions the Petitioners objected to the introduction of testimony on the divisibility angle of joint venture contracts and that the objections, among others, were interposed that the questions were irrelevant, incompetent and immaterial.

Among other objections, the objection was made that questions were irrevelant, incompetent and immaterial. [See objections interposed by the Petitioners on pp. 84, 87-88 of the Transcript of the Record.]

The Petitioners have not cited any case authority nor have they in any manner attempted to show that the questions presented to which they objected, were incompetent, irrelevant or immaterial, and on the contrary now argue that the questions and the divisibility of the contract are very relevant and so relevant as to require reversal of the decision of the Court of Appeals, of the District Court and of the Referee.

We submit that but for the delaying tactics of the Petitioners, complete evidence of the divisibility of the contract would have been presented to the Court and the error they complain of, if any, would not be in the record. The

very cases cited by the Petitioners on page 21 sustain the proposition that they should be estopped from now urging an error which they induced.

In addition to the foregoing, from the record the Court of Appeals sitting as a court of equity (this was a review of a bankruptcy decision), made the specific finding of fact that the joint venture contract was divisible and that regardless of whether or not the contract was divisible, performance had been to all intents and purposes completed at the time of the filing of the bid with the Commodity Credit Corporation. (See p. 448 of the Decision of the Court of Appeals.) These findings are based on conflicting evidence, and it is uncontrovertible that Hudson went to Washington, D. C. and assisted in the preparation and presentation of the bids. [Tr. of Record, pp. 91, 36-37, 223.] That prior to the trip to Washington, D. C. and the signing of the written joint venture contract Reeve and Hudson prepared plans, made estimates, took off material lists, and made arrangements with an influence man. [Tr. of Record, pp. 136-137.] That the estimates and plans were all prepared by the bankrupt and his assistants or associates prior to the time that Reeve and Hudson left for Washington some thirteen days prior to bankruptcy, and that prior to Bankruptcy the profits had been estimated, and there merely remained for the Commodity Credit Corporation to accept the bid (*supra*); that the acceptance of the bid took place before bankruptcy and was affirmed on the very day of bankruptcy (*supra*); with the additional fact that all of the moneys paid out of joint venture funds were divided equally between Hudson and Lloyd R. Reeve, Inc., without any further performance, coupled with the other facts, certainly gave rise to a logical inference that Hudson's performance was com-

plete prior to bankruptcy, and that the contract was divisible.

In addition, the contract itself [*supra*] indicates Reeve, from the moment that the contract was secured, was required "to forthwith supply the management of all labor and material . . . . to the end in view of fulfilling all required work within the specified time."

As pointed out by the Court of Appeals at page 447 "What then was there for Hudson to do after the contract had been obtained? We can conceive of nothing except being available in the event Reeve wished to consult him." In addition, any experienced contractor could have fulfilled the contract with the Commodity Credit Corporation by following the plans and specifications, estimates, etc. prepared prior to the offering of the bid.

The Cases Cited by Petitioners Relating to Separable Contracts and Earnings Subsequent to Bankruptcy Are Inapplicable.

At pages 31 to 34 each of the cases cited by the Petitioners in the argument contained in the Petitioners' Petition between pages 15 to 19, are distinguished, and the Court of Appeals after deciding that the contract was divisible and that, even if the contract was not divisible, performance had been completed at the time of bankruptcy, exhaustively distinguished and considered the very cases in the argument before this Court and the very astute reasoning of the Court of Appeals regarding these various cases, may be found at pages 443, 444, 445, 446 and 447 of that Court's Opinion. In a nutshell, these cases all deal with clean-handed claimants and do not involve cases which "scream fraud to the high heavens."

Conclusion.

We respectfully submit that the Petitioners' Petition for Writ of Certiorari should be denied as the Petition fails to show wherein any important question, such as would invite the Court's attention, was decided by the Court of Appeals; fails to demonstrate wherein the decision in any way conflicts with decisions of other Circuit Courts, or for that matter conflicts with any applicable State or Federal law; is not clear and concise but on the contrary is ambiguous and in places unintelligible.

The Petition is decidedly disrespectful to the Referee in Bankruptcy and to the Court of Appeals and advances no sound reason why the decision of the Court of Appeals should be reversed.

We therefore respectfully submit that the Court should deny Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX I.

Supreme Court Rules—Rule 19 (28 U. S. C. A., p. 12).

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other Court whose determinations are by law reviewable on writ of certiorari.